PROPERTY — WILLS — CONSTRUCTION OF AMBIGUOUS CLAUSE. — A testatrix bequeathed five thousand dollars to A, and devised and bequeathed the residue of her estate to B. In a codicil she declared: "I hereby revoke the bequest made by me to B, and give the five thousand dollars (heretofore in my will bequeathed to said B) to C." *Held*, that the codicil revoked the bequest to A. *Home for Incurables* v. *Noble*, 19 Sup. Ct. Rep. 226.

The decision, which at first sight appears rather odd, rests upon satisfactory reasoning. A mistake being apparent upon the face of the codicil, the court must construe the revoking clause so as to carry out the intention of the testatrix. An examination of the whole instrument leads to the conclusion that it could not have been the intention to revoke the residuary bequest to B. Hence the word "B" may be stricken out. 2 Williams Executors, 938. And there is sufficient evidence upon the face of the will to justify the court in concluding that the revoking clause was intended to apply to the bequest to A. In the lower court a contrary decision was based upon the argument that the codicil contained two clauses separate from each other, a revocation free from ambiguity, and a bequest that could be rendered effective by disregarding the parenthetical clause. But a conclusive answer to this view is that it disregards the settled rule of construction that the different clauses of a will should be considered in reference to each other. *Lane* v. *Vick*, 3 How. 464.

TORTS — REPLEVIN — ATTACHED PROPERTY. — In a suit against a debtor the sheriff attached goods of his which were exempt from attachment. *Held*, that the statute providing that where goods are taken under execution one, other than the defendant, claiming ownership, may replevy them, was remedial, and that this debtor could not replevy, his goods being *in custodia legis*. *Prescott* v. *Starkey*, 41 Atl. 1021 (Vt.).

The common-law rule that goods *in custodia legis* cannot be replevied has been laid down in its broadest extent. *Kittredge* v. *Holt*, 55 N. H. 621; *Isley* v. *Stubbs*, 5 Mass. 280. The rule, however, is founded on grounds of public policy; that to allow replevin would only lead to circuity and deprive the creditor of his security. It is clear that the reasoning does not hold when goods of a third party have been wrongfully seized in execution, and the better view seems to be that at common law such property might be replevied by the true owner. *Winnard* v. *Foster*, 2 Lutw. 1191; *Rooke's Case*, 5 Coke, 99; *Clark* v. *Skinner*, 20 Johns. 465. By parity of reasoning the replevy of goods exempt from attachment should be allowed, and such a view has been taken in some cases. *Durch* v. *Rahner*, 61 Ind. 64; *Frazier* v. *Syas*, 10 Neb. 115; *Ross* v. *Hawthorne*, 55 Miss. 551. The whole question has been largely dealt with by statute.

TORTS — WILFUL WRONG — AVOIDABLE CONSEQUENCES. — The plaintiff was wrongfully riding on the footboard of defendant's engine. The engineer wilfully turned steam on him, whereupon he jumped to the next car, but slipped and was injured. *Held*, that since the act of the engineer was a wilful assault, the defendant is liable for the injury, irrespective of whether the plaintiff exercised ordinary care in jumping. *Galveston, etc. Ry. Co.* v. *Zantzinger*, 48 S. W. Rep. 563 (Tex. Sup. Ct.).

The theory of the decision is that when the defendant's act is intentional and wilful it is the proximate cause, unless the plaintiff is guilty of wilful or gross negligence in failing to avoid the consequences thereof. Where the defendant's act is negligent the plaintiff is under a duty to use ordinary care to avoid the consequences. *Hogle* v. *New York, etc. R. R. Co.*, 28 Hun, 363. Likewise, where the defendant's act is illegal. *Flower* v. *Adam*, 2 Taunt. 314. There is a tendency to hold a defendant for more remote consequences when his act is intentional, but to relieve the plaintiff, in such a case, from all duty to exercise ordinary care is inconsistent with the doctrine of avoidable consequences. It seems, therefore, that it should have been left to the jury to determine whether the plaintiff, in what he did, acted reasonably, or whether he was so deprived of his presence of mind as to render his act irresponsible, *Jones* v. *Boyce*, 1 Stark, 493; *Woolley* v. *Scovell*, 3 Man. & Ry. 105.

REVIEWS.

STUDIES IN INTERNATIONAL LAW. By Thomas Erskine Holland, D.C.L. Oxford: At the Clarendon Press. London and New York: Henry Froude. 1898. pp. viii, 314.

This volume consists mainly of a number of lectures and addresses delivered by the author during the last twenty-five years. They discuss

a variety of points of international law in a manner which assumes no special knowledge, and which makes them interesting to the general reader as well as to the student. The subjects are roughly grouped under four heads: "The Law of War;" "Illustrations of the System of International Law;" "The Eastern Question;" and "Biographical Sketches." In treating under the first group of "The Brussels Conference of 1874," and "The Progress of the Written Law of War," subjects of especial interest at this time in view of the propositions of the Czar, Professor Holland doubts the possibility at present of any codification of the laws and usages of war, and recommends the promulgation by the various governments of authoritative instructions for the use of their armies, such as those issued by President Lincoln to the armies of the United States, or the Manual of the Institute of International Law, in the hope that these bodies of rules may be assimilated to each other in the future. In "The Bombardment of Open Coast Towns" attention is recalled to the somewhat running controversy which raged in the columns of the "London Times" during several months of 1888 in consequence of the author's criticism of the utter disregard of the rules of international law displayed by the attacking fleet during the British naval manœuvres of that year. In an interesting discussion of "International Law in the War between Japan and China," which has been translated into Japanese by the order of that government, Japan is shown to have conformed to the laws of war in a manner worthy of the most civilized nations, while the Chinese ideas of the subject were merely rudimentary. The author makes a novel distinction between "pacific blockade" when it is a mere measure of reprisal and when it is instituted for some "high political object, as in case of intervention, or is a measure of self-preservation, such as the suppression of a rebellion." In the former case, the opinion is expressed that the blockade should be directed against the flag of the blockaded State alone, while in the latter third powers may be more fairly called upon to submit to interference with their trade. It may, however, be asserted that there is no rule compelling a power to assent, under the guise of a peaceful proceeding, to the application of a purely belligerent right; and that whenever the blockade is directed against the flag of a third State, such State is entirely justified in assuming that war exists between blockading and blockaded State, and in acting accordingly, as was the attitude of the English government towards the blockade of Formosa by France in 1884.

In the second group of subjects the author takes up "Recent Diplomatic Discussions as Illustrations of the System of International Law," a somewhat misleading title, since this lecture was delivered in 1878, — "The Literature of International Law in 1884," and "International Law and Acts of Parliament." Three of the four articles of the third group belong rather to the history of the Eastern question than to international law proper, and the fourth article, "The International Position of the Suez Canal," would be more satisfactory if Professor Holland had given his opinion upon just what is the international state of the Suez Canal in the face of the officially announced reservation of Great Britain regarding the agreement between the Powers of 1888 for its neutralization. The fourth and last group of subjects consists of appreciative obituary notices of Mountague Bernard, Sir Robert Phillimore, W. E. Hall, and Sir Travers Twiss, read in French before the Institut de Droit International, of which the author is a distinguished member. E. H. S.